Graphic Communications International Union, Chicago Local 458–3M AFL–CIO *and* American Bank Note Company and Chicago Typographical Union No. 16/CWA No. 14408. Case 13–CD–494

August 26, 1994

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

The charge in this Section 10(k) proceeding was filed March 31, 1994 by the Employer, alleging that the Respondent, Graphics Communications International Union Local 458–3M (GCIU) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Chicago Typographical Union No. 16/CWA No. 14408 (Typographical Union). The hearing was held April 8, 1994 before Hearing Officer Richard Kelliher-Paz.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a Delaware corporation, is engaged in the manufacture of security documents at its Bedford Park, Illinois facility, where it annually ships goods valued in excess of $50,000 to customers located outside the State of Illinois. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) the Act and that the GCIU and the Typographical Union are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer produces printed security documents at its Bedford Park plant, which includes food stamps for the United States Government, travelers checks, stocks and bonds, car titles, and currency for foreign governments. The Employer is party to contracts with both the GCIU and the Typographical Union. There are two contracts with the GCIU; one covers 27 litho prepress employees and litho pressmen and the other covers 220 bindery employees.[1] The contract with the Typographical Union covers four employees.

The Employer's current printing system is the Purup system, which is a desktop printing system. The Purup system can set type and design a nonprocess color printing job by rearranging component text or design features. The Purup system produces film and not plates, it is not readily transferable to Macintosh, it cannot scan in Optical Character Recognition (OCR), it cannot process color, and it cannot be connected by modem to any other machines at other locations. The Purup system is also incapable of performing four-color process work. Work on the Purup system currently is performed by employees of the Employer represented by both Unions.[2]

In February 1994, the Employer's assistant general manager, Ronald Michi, informed representatives of both unions of its intention to install an AGFA computer terminal at its Bedford Park facility. The AGFA system is a component of a desktop printing system. In addition to all the functions that the Purup system performs, the AGFA system also scans OCR text, scans four-color process printing, makes plates, and is capable of being connected to any other computer in any other location. A significant difference from the Purup system is that the AGFA system is capable of four-color process work.

On February 14, 1994, Steven Berman, president of the Typographical Union, met with Michi and the Employer's human resources manager, Maryann Owen, to discuss the assignment of work on the AGFA system. The testimony regarding what was said at that meeting is conflicting. Both Michi and Owen testified that at that meeting, Michi informed Berman that the Employer was awarding the work on the AGFA system to the GCIU, but that the GCIU might agree to share jurisdiction with the Typographical Union. Michi and Owen also testified that Berman claimed jurisdiction over the AGFA system for the Typographical Union. Berman, however, testified that Michi did not tell him that the work was being awarded to the GCIU, but rather, testified that Michi informed him that work on the AGFA system would be divided between the employees represented by both Unions.[3]

On March 28, 1994, the GCIU, in a letter sent by President Charles Timmel, informed Michi that it be-

[1] The Respondent Union, GCIU Local 458–3M, was created by merging the previously separate litho and bindery local unions.

[2] Pursuant to a 1989 supplemental agreement to the collective-bargaining agreement between the Employer and the Typographical Union, the Employer, in its discretion, agreed to assign employees represented by the Typographical Union to work on the Purup system and guaranteed lifetime employment for seven Typographical Union employees named in that agreement.

[3] It is unncessary to resolve the above conflicts in testimony. While the above witnesses disagree as to the terms of the work assignment, they all agree that an assignment of work was made.

lieved that the AGFA work fell within the GCIU's jurisdiction. In a subsequent telephone conversation between Timmel and Michi, Timmel stated that unless the AGFA work was assigned to employees of the Employer represented by the GCIU, he would not permit other employees of the Employer represented by the GCIU (i.e., the 27 employees under the litho contract and the 220 employees under the bindery contract) to handle or complete the processing of material produced on the AGFA system (i.e., film or plates). At the date of the hearing, the Employer had not yet installed the AGFA computer terminal nor had it set a definite target date for its installation. The parties stipulated that both Unions claim the work in dispute.

B. *Work in Dispute*

The disputed work involves the operation of the AGFA computerized image-processing system by the employees of American Bank Note Company at its facility located at 5858 West 73rd Street, Bedford Park, Illinois.

C. *Contention of the Parties*

The Employer contends that a jurisdictional dispute is properly before the Board, noting that where, as here, an employer has made a formal assignment of work, it is no bar to a jurisdictional dispute that the work has not commenced or has been completed. The Employer states that GCIU threatened to stop all production at the plant by stating that the GCIU would not permit any employees of the Employer represented by it to handle or process any material produced on the AGFA system (i.e., film or plates) unless such work was performed by employees represented by the GCIU. Thus, the Employer contends, this threat of a work stoppage provides reasonable cause to believe that a violation of Sec. 8(b)(4)(D) has occurred. Finally, the Employer contends that the factors of employer preference and past practice, industry practice, relative skills and the work involved, efficiency of operations, and loss of jobs compel an award of the work to the employees represented by the GCIU.

The GCIU contends that the Board's decision in *Communications Workers Local 11-C (Rosenthal & Co.*), 312 NLRB 531 (1993), is factually similar to the dispute here and supports an award of the work to the GCIU. The GCIU argues that the following factors fully support an award of the work to the employees represented by the GCIU: collective-bargaining agreements, employer preference and past practice, area and industry practice, relative skills, economy and efficiency of operations, and potential employment impact.

The Typographical Union contends that the Board should not assert jurisdiction pursuant to Section 10(k) of the Act because there is no evidence that the Employer is faced with a strike threat over its contemplated assignment of the work in dispute. It argues that the Employer is attempting to use the Board's processes to avoid meeting with it and possibly arbitrating the issue of the assignment of the work under the parties' collective-bargaining agreement. Finally, the Typographical Union argues that there is no contractual basis for the Board to determine that the GCIU has exclusive jurisdiction over certain phases of the operation of the AGFA system (i.e., typesetting or proofreading), because this has been within the exclusive jurisdiction of the Typographical Union. Thus, it contends that the AGFA system is essentially a replacement of the Purup system, and therefore jurisdiction over the new system should be shared in the same manner as the old system.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

At the outset, we acknowledge that the work in dispute has not commenced. It is well-established, however, that once an employer, as here, makes a formal assignment of that work, the fact that the work has not commenced does not bar the Board from deciding the jurisdictional dispute.[4] Further, as described above, in a telephone conversation between Charles Timmel, president of the GCIU, and Ronald Michi, the Employer's assistant general manager, Timmel informed Michi that if the work in dispute were not assigned to the employees represented by the GCIU, other employees represented by the GCIU would not complete the processing of any material produced on the AGFA system—action which would effectively halt all the Employer's production. There is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred if a labor organization that represents employees who are assigned the disputed work threaten to strike or otherwise coerces an employer to continue such an assignment.[5]

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and, as stipulated by the parties, there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

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[4] *Graphic Communications Local 109 (Courier-Citizen Co.*), 223 NLRB 309 (1991).

[5] *Laborers Local 731 (Slattery Associates*), 298 NLRB 787 (1990); *Laborers (O'Connell's Sons*), 288 NLRB 53 (1988); *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200 (1985); *Carpenters Local 1207 (Carlton Inc.)*, 313 NLRB 71 (1993).

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of the disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction*), 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no claim that the Board has certified either the GCIU or the Typographical Union as the collective-bargaining representative of any of the Employer's employees.

The Employer is a member of the Chicago Lithographers Association, an employer organization authorized to bargain on behalf of the Employer. The collective-bargaining agreement between the Chicago Lithographers Association and the GCIU, effective by its terms from May 1, 1990 to April 30, 1996, encompasses ''all work, processes and operations directly related to Lithography or Offset Printing'' and includes ''any technological change, evolution or substitution for any work, process, or operation'' used in lithographic printing and any ''new or improved machines or processes for lithographic production work.'' The collective-bargaining agreement between the Typographical Union and the Employer (including the supplemental agreement), effective by its terms from June 7, 1992 to June 6, 1995, covers typesetting and proofreading and includes ''any process, machinery or equipment . . . used as an evolution or substitute for current processes, machinery or equipment.'' Thus, the language of both collective-bargaining agreements covers aspects of the work in dispute. We find that this factor does not favor either employees represented by the GCIU or the Typographical Union and is neutral.

2. Employer preference and past practice

The preference of the Employer is to assign the work in dispute to employees who are members of the GCIU. Michi testified that the assignment of the work in dispute to members of the GCIU is consistent with the Employer's previous assignment of AGFA work at its Horsham, Pennsylvania facility to members of the GCIU. Michi also testified that the GCIU operates a training school and that their members are familiar with the materials produced by the AGFA system. We find that this factor favors an award of the disputed work to the employees represented by the GCIU.

3. Area and industry practice

Michi testified that members of the GCIU are traditionally assigned to handle the four-color process work produced by conventional printing methods and that the AGFA system produces four-color process work. In addition, GCIU business representative, Lawrence Jankowski, testified that an understanding has been reached within the Chicago Lithographic Association (the employer association to which the Employer belongs and which negotiated the collective-bargaining agreement between the Employer and the GCIU) that desktop publishing technology (including prepress functions performed on a Macintosh computer) is within the contractual definition of lithographic production work. Jankowski also identified 10 other employers (some of which are members of the Chicago Lithographic Association and also party to the same collective-bargaining agreement as the Employer) at which the GCIU represents lithographic production units and where it is undisputed that GCIU's jurisdiction includes desktop publishing technology. We find that this factor favors an award of the disputed work to the employees represented by the GCIU.

4. Relative skills

The AGFA system has not been installed at the Employer's facility, nor has the Employer initiated any type of training program for the system. The AGFA system is similar to the existing Purup system in that both systems consist of computer terminals which utilize a keyboard and mouse through which operators of the system input or retrieve the data used to produce images. However, Michi testified that the employees who are members of the GCIU are more skilled in the handling of color and ''dot pattern'' material which will be produced by the AGFA system. Moreover, Michi further testified that the Employer is paying into the GCIU training school and that no similar program is presently in place for members of the Typographical Union. We find that this factor also favors an award of the disputed work to the employees represented by the GCIU.

5. Economy and efficiency of operations

Michi testified that the reason that the AGFA system is being installed at the Bedford Park facility is that it will be able to access, by the use of a modem, archival material from the Horsham, Pennsylvania AGFA mainframe, thus avoiding costly and duplicative production design and typesetting at Bedford Park. It would be more efficient for GCIU members at Bedford Park to coordinate the transfer of data on the AGFA system with GCIU members at Horsham who are assigned to work on the AGFA system. In addition, GCIU members at Horsham, who are already assigned to work on the AGFA system, would be able to train

GCIU members at the Bedford Park facility on that system. We find that this factor also favors an award of the disputed work to the employees represented by the GCIU.

6. Arbitration awards

The GCIU and the Typographical Union submitted arbitration awards into the record which involve the award of desktop publishing work to each union respectively. We find that this factor is neutral.

7. Loss of jobs

Michi testified that if the work in dispute were assigned to the Typographical Union, up to two employees represented by the GCIU could be laid off. If, however, the work in dispute were assigned to the GCIU, there would be no adverse employment impact. Michi also testified that the Employer currently does not intend for the AGFA system to replace the Purup system (on which the Typographical Union employees work). Thus the employment of the Typographical Union members would not be affected. Moreover, the 1989 agreement between the Employer and the Typographical Union guarantees lifetime employment for the Typographical Union employees. We find that this factor favors an award of the work in dispute to the employees represented by the GCIU.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the GCIU are entitled to perform the work in dispute. We reach this conclusion relying on employer preference and past practice, area and industry practice, relative skills, efficiency and economy of operations, and loss of jobs. In making this determination, we are awarding the work to employees represented by the GCIU, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees represented by Graphic Communications International Union, Chicago Local 458–3M AFL–CIO are entitled to perform the operation of the AGFA computerized image-processing system by the employees of American Bank Note Company at its facility located at 5858 West 73rd Street, Bedford Park, Illinois.